

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THOMAS HANCOCK, SR., et al.,

Plaintiff(s),

REPORT AND RECOMMENDATION

-against-

CV 06-1716 (DRH) (ETB)

COUNTY OF SUFFOLK, et al.,

Defendant(s).

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TO THE HONORABLE DENIS R. HURLEY, United States District Judge:

This is a civil action under § 1983 which arises out of arrests of the pro se plaintiffs at the Irish Coffee Pub on Carleton Avenue in Central Islip, where the pro se plaintiffs and some 50 guests were celebrating the 60th birthday of the lead pro se plaintiff, Thomas Hancock, Sr. There are nine (9) plaintiffs in all - five (5) of whom bear the surname Hancock.

The action commenced against the County of Suffolk and the individual Suffolk County police officers involved in the arrest and prosecution in April 2006.

Counsel for the plaintiffs, Thomas F. Liotti, was relieved from further representation of the plaintiffs on July 27, 2007 due to “irreconcilable differences” consisting of the cessation of all communication with counsel which severely impaired counsel’s ability to comply with the defendants’ discovery demands and otherwise consult and assist in the litigation process. See Affirmation of Thomas F. Liotti, dated June 22, 2007 at 5-6, in Support of Motion to Withdraw. Although the pro se plaintiffs were directed to be present at the oral argument on that motion so that they could be heard, see order dated July 20, 2007, no pro se plaintiff complied with this directive or otherwise communicated with the court. See order dated July 27, 2007 at 1-2.

Nonetheless, this action was adjourned for 45 days to afford the nine (9) plaintiffs an opportunity to retain new counsel. Id. at 2. The order further provided that if counsel was not retained, the plaintiffs were directed to appear before the undersigned, along with counsel for the defendants, Assistant County Attorney Richard T. Dunne, on September 18, 2007 at 10:00 a.m. Id. The court further cautioned the plaintiffs that their failure to appear on September 18, 2007 “by counsel or in person will expose this action to dismissal under Rules 16(e) and 41(b) of the Federal Rules of Civil Procedure.” Id.

On September 18, 2007 only A.C.A. Dunne appeared. There was no communication with the court from any counsel or by the pro se plaintiffs.

By order dated September 18, 2007, the action was again adjourned, but this time the pro se plaintiffs were directed to appear “with or without counsel” on October 31, 2007 at 2:00 p.m. The court noted that the pro se plaintiffs had failed to communicate in any way with the court or counsel for the defendants between July 27 and September 18, 2007. (Order dated September 18, 2007 at 1). Once again, the court cautioned the plaintiffs that “[t]he failure to appear will expose this action to dismissal based on abandonment and/or refusal to obey the orders of the court. Rules 16(e) and 41(b), Fed. R. Civ. P.” Id.

On October 31, 2007 again only A.D.A. Dunne, counsel for the defendants, appeared in this action. The pro se plaintiffs failed to, in any manner, communicate with the court as to their non-appearance.

As directed on October 31, 2007, the County Attorney is directed to serve a copy of this Report and Recommendation on plaintiffs by regular mail and file proof of such service with the court.

RECOMMENDATION

Based on the foregoing, this action should be dismissed for failure to comply with the orders of

the court and based on the plaintiffs' abandonment of this action. See Rules 16(e) and 41(b), Fed. R. Civ. P.

FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Any objections to this Report and Recommendation must be filed with the Clerk of the Court with a copy to the undersigned within 10 days of the date of this report. Failure to file objections within the specified time waives the right to appeal the District Court's order. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993), cert. denied, 115 S.Ct. 86 (1994); Frank v. Johnson, 968 F.2d 298 (2d Cir.), cert. denied, 113 S.Ct. 825 (1992); Small v. Secretary of Health and Human Serv., 892 F.2d 15, 16 (2d Cir. 1989)(per curiam).

Dated: Central Islip, New York
November 1, 2007

/s/ E. Thomas Boyle
E. THOMAS BOYLE
United States Magistrate Judge